92-182

No. _____

Supreme Court, U.S.
FILED
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1991

LORNA L. WILLIAMS,

Petitioner

THE INCORPORATED CITY OF OKOBOJI, IOWA, BEN D. SAUNDERS, City Administrator; LEO PARKS, Mayor; HAL REED, CHRIS BJORNSTAD, KIRK STAUSS, CHARLENE HOUGE, JAMES GOLDEN, Council Members, and MICHAEL CHOZEN, City Attorney,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED FOR REVIEW

I

CAN THE APRIL 9, 1991 ORDER OF THE DISTRICT COURT, AFFIRMED BY THE 8TH CIRCUIT BE SUSTAINED WHEN IT IS IN OBVIOUS AND DIRECT CONFLICT WITH THE HOLDING OF THIS COURT IN DEAKINS V. MONAGHAN, 484 U.S., 193(1988) IN WHICH THIS PETITIONER AND MONAGHAN BOTH ALLEGED DAMAGES CLAIM FOR CONSTITUTIONAL VIOLATIONS WHICH COULD NOT BE REDRESSED IN PENDING STATE COURT PROCEEDINGS. THE EIGHTH CIRCUIT ORDER IS IN APPARENT CONFLICT WITH ENGLAND V. LOUISIANA ST. BD. OF MEDICAL EXAMINERS, 375 U.S.411, 422, 423 (1964).

II

ON THE MOTION TO RECONSIDER, SHOULD THE 8TH CIRCUIT HAVE HELD THIS CASE OPEN TO RECEIVE THE RESPONSE FROM THE IOWA SUPREME COURT ON PENDING QUESTIONS CERTIFIED OF STATE LAW WHICH WERE ATTACHED TO THE MOTION TO RECONSIDER AND WHICH MOTION WAS DENIED.

III

CAN THE APRIL 9, 1991 ORDER OF THE DISTRICT COURT APPROVING THE PLACING OF AN EX PARTE LIS PENDENS ON WILLIAMS' PROPERTY BE AFFIRMED BY THE CIRCUIT COURT WHEN THE DISTRICT COURT'S APPROVAL DIRECTLY CONFLICTS WITH CONNECTICUT V. DOEHR, US , 111 S.Ct. 2105.(1991)

IV

DOES THE PENDING STATE INJUNCTION ACTION, NOT AUTHORIZED BY THE STATUTE Sec. 414.20, IOWA CODE, FOR WANT OF NON-COMPLIANCE WITH NOTICE OF PUBLIC HEARING (Sec. 414.4, 414.5, IOWA CODE), QUALIFY AS "AN ONGOING STATE JUDICIAL PROCEEDING" UNDER MIDDLESEX COUNTY ETHICS COMM. V. GARDEN STATE BAR ASS'N., 457 U.S. 423, 432 (1982).

V

DOES THE "BAD FAITH" OR "HARASSMENT"

EXCEPTIONS TO YOUNGER ABSTENTION APPLY BECAUSE RESPONDENT CITY OFFICIALS KNEW THAT THE ATTEMPTED AMENDATORY ORDINANCE QUOTED IN THE STATE COURT PETITION WAS VOID.

VI

DOES THE ATTEMPTED AMENDATORY ORDINANCE FALL WITHIN THE EXCEPTIONS TO A YOUNGER ABSTENTION WHEN, AS ALLEGED, IT IS UNCONSTITUTIONAL FACIALLY AND AS APPLIED: SUCH ATTEMPTED AMENDATORY ORDINANCE READING AS FOLLOWS:

"Residential purposes:

The intent to use and/or the use of a room or group of rooms for the sleeping, living and housekeeping activities for the same person or the same group of persons on a permanent or semi-permanent basis of an intended tenure of one month or more."

VII

WHETHER THE IOWA SUPREME COURT APPEAL SHOULD BE STAYED UNTIL THE CONSTITUTIONAL QUESTION IS DETERMINED BY THE FEDERAL COURT.

VIII

BECAUSE THE IOWA SUPREME COURT HAS DECLINED TO CERTIFY QUESTIONS OF STATE LAW TO DISPOSE OF THE CONSTITUTIONAL QUESTION, OR BECAUSE YOUNGER ABSTENTION WAS INAPPROPRIATE IN THE FIRST INSTANCE, IS THE FEDERAL COURT READY TO HEAR THE CONSTITUTIONAL CHALLENGE AND OTHER STATED FEDERAL CLAIMS.
(England V. Louisiana State Board of Medical Examiners, 375 U.S. 411, 422 (1964)

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1991

LORNA L. WILLIAMS,

Petitioner

THE INCORPORATED CITY OF OKOBOJI, IOWA
BEN D. SAUNDERS, City Administrator;
LEO PARKS, Mayor; HAL REED, CHRIS
BJORNSTAD, KIRK STAUSS, CHARLENE
HOUGE, JAEMS GOLDEN, Council Members,
and MICHAEL CHOZEN, City Attorney,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT

Petitioner, Lorna L. Williams in this 42 U.S.C. 1983 action respectfully prays that a writ of certiorari issue to review the Opinion and Orders of the United States Court of Appeals for the Eighth Circuit entered in this proceeding.

OPINIONS BELOW

IN THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, No. 91-2396; ORDER filed March 19, 1992, (not reported) affirming the District Court .....App. p.1-4.

IN THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, No. 91-2396NISC: ORDER denying Motion for Rehearing, filed May 14, 1992 ..... App. p.5.

IN THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, No. 91-2396NISC: ORDER Denying Motion for Reconsideration filed June 5, 1992 ..... App. p.6.

(QUESTIONS CERTIFIED TO IOWA SUPREME COURT PROCEEDINGS ATTACHED TO MOTION TO RECONSIDER, App. pp.37-39)

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF IOWA, WESTERN DIVISION, No. 89-4058: ORDER (not yet published) filed April 9, 1991, ... App. p.7-12.

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF IOWA, WESTERN DIVISION, No.89-4058, ORDER: filed May 21, 1991, denying Motion for Amendment to Findings and Conclusions in ORDER of April 9, 1991 ..... App. p.13.

APPEAL JURISDICTION

28 U.S.C. Sec. 1254 (1)

United States Supreme Court Rule 10(c) and Rule 13.

CONSTITUTIONAL PROVISIONS

Constitution of the United States:

FIRST AMENDMENT

NINTH AMENDMENT

FOURTEENTH AMENDMENT

UNITED STATES STATUTES

42 U.S.C. 1983	28 U.S.C. 2201
42 U.S.C. 1985(c)	28 U.S.C. 1343
42 U.S.C. 1988	28 U.S.C. 2283

IOWA CODE -1991

Sec. 414.4 (Procedure to Amend Ordinance)
Sec. 414.5 (last paragraph -414.4 applicable)
Sec. 414.20 (Authority to correct violations)

Chapter 684A - QUESTIONS OF LAW IN SUPREME COURT CERTIFIED

684A.1 Power to Answer

684A.2 Method of Invoking

684A.8 Power to Certify (includes "motion of a party)

684A.11 Title ("Uniform Certification of Questions of Law Act.")

STATEMENT OF THE CASE

For eight peaceful years, Respondent Williams rented out her two-family private dwelling in Okoboji, Iowa for periods of one and two weeks terms, under a permit from the City for building the second unit for rentals and under the then 1972 Ordinance. There never was any complaint from the city during these eight years. There was never any disturbances at her place.

Without notice of public hearing required by Sec. 414.4, 414.5, Iowa Code, the City Council on August 9, 1988, attempted to adopt the following Amendment, redefining "Residential purposes" as follows:

> "Residential purposes:
> The intent to use and/or the use of a room or group of rooms for the sleeping, living, and housekeeping activities for the same person or same group of persons on a permanent or semi-permanent basis of an intended tenure of one month or more."

(The words "living, sleeping" were reversed. Other underscored words were added.)

On May 16, 1989, Respondent Michael Chozen, City Counsel, by long-distance

telephone call, told Petitioner Williams about the 1988 amendment and told her to break all outstanding leases for less than one month.

On May 24, 1989, Respondent City filed a Petition in the state court, Equity No. 18193, and obtained an ex parte ORDER FOR TEMPORARY INJUNCTION without notice and hearing and filed an ex parte lien upon her real estate. (which lien still remains)

The PETITION, never amended, recited that the 1972 Ordinance had been amended and quoted the "sleeping, living" portion of the attempted amendment.

On May 19, 1989, five days before Respondent City filed the Petition, Respondent City Attorney Michael Chozen, had his attention called to the fact the amendment was void for want of statutory enactment procedures. (App. p.40)

On June 16, 1989 at 8:06 a.m. Respondent filed this action in the United States District Court for the Northern District of Iowa, alleging the ex parte Order for Temporary

Injunction and lis pendens lien, showing great and immediate irreparable injury, and praying for damages for constitutional violations. (App. p.14-19)

Ignoring Petitioner's damages claim, and Petitioner's MOTION TO AMEND FINDINGS citing Deakins V. Monaghan, supra, the Court entered its ORDER herein dismissing (not holding in abeyance) the entire case. The Court dismissed based on Younger abstention grounds, citing Middlesex Ethics Committee V. Garden State Bar Ass'n., supra. (App. p. 7-12) The order also denied stay of the state court proceedings.

Meanwhile, with the Stay denied in the Federal Court, the Petitioner, after filing the NOTICE required under England V. Louisiana State Board of Medical Examiners 375 U.S. 411, 415, the case was tried in State Court.

The 8th Circuit affirmed the District Court's Order dismissing the entire case including the damages claim. It denied a rehearing.(App. p. 5) It denied the Motion

for Reconsideration even though there were proceedings in the IOWA STATE SUPREME COURT (highest Court in the State) on Questions certified of State law were attached.(Motion App. p.26-30; Exhibits attached App.p.31-39)

REASONS FOR GRANTING WRIT

I

BASED ON DEAKINS BY THIS OPINION OF THE 8TH CIRCUIT, THE UNIFORMITY AMONG THE CIRCUITS FOR STAY (NOT DISMISSAL) IF YOUNGER ABSTENTION IS APPROPRIATELY APPLIED IS VIOLATED, AND AGAIN THERE IS A SPLIT AMONG THE CIRCUITS.

II

THE OPINION OF THE 8TH CIRCUIT IN THIS CASE AFFIRMING THE DISMISSAL OF THE ENTIRE CASE, INSTEAD OF STAYING DAMAGES CLAIMS IN THE FEDERAL COURT, DENIES PETITIONER WILLIAMS EQUAL PROTECTION; THE PLAINTIFFS IN THE CASES CITED IN DEAKINS HAD THEIR FEDERAL CASES STAYED NOT DISMISSED.

III

THE OPINION OF THE 8TH CIRCUIT IS IN CONFLICT WITH ITS EARLIER OPINION, MCCURRY V. ALLEN, 606 F.2d 799 (CA 8 1979), NOTED

BY JUSTICE WHITE IN HIS CONCURRING OPINION IN DEAKINS, SUPRA AT p. 206, FOOTNOTE 1.

IV

THIS UTILIZATION OF CERTIFIED QUESTIONS TO THE COURT IN IOWA, REGARDING QUESTIONS OF LAW IN THIS LIVE CONTROVERSY IS IMPORTANT, SUBSTANTIAL AND IN KEEPING WITH THE ONGOING STREAMLINING AND SPEEDING UP APPEAL PROCEDURES IN FEDERAL LITIGATION.

(Table of Jurisdictions wherein Uniform Certification of Questions of Law Act has been adopted. App. p. 43)

V.

BECAUSE, THE ORDER OF THE 8TH CIRCUIT COURT OVERRIDES DEAKINS ON THE ISSUE OF YOUNGER ABSTENTION.

VI.

BECAUSE, THE"ONGOING STATE PROCEEDING" FACTOR STATED IN MIDDLESEX COUNTY SHOULD NOT HAVE BEEN APPLIED TO A STATE ACTION TO ENFORCE A VOID ORDINANCE.

VII

BECAUSE, THE RESPONDENT CITY KNEW IT WAS ATTEMPTING TO ENFORCE A VOID ORDINANCE

WHICH IS WITHIN THE "BAD FAITH" OR "HARASSMENT" EXCEPTIONS OF YOUNGER.

VIII

BECAUSE, THE CONTINUING EX PARTE LIS PENDENS LIEN CAUSES GREAT, IMMEDIATE AND CONTINUING IRREPARABLE INJURY.

IX

BECAUSE, THE ORDINANCE IMPLICATES OTHER CONFLICTING HOLDINGS OF THIS COURT RE: RIGHT TO A HOME, RIGHT TO CONTRACT, RIGHT TO TRAVEL TO RESIDE WITHOUT A DURATIONAL RESIDENCY REQUIREMENT, ETC.

X

BECAUSE THE PENDING APPEAL IN THE IOWA SUPREME COURT SHOULD BE STAYED, PENDING DETERMINATION OF THE CONSTITUTIONAL CHALLENGE BY FEDERAL COURT.

XI

BECAUSE THE CONSTITUTIONAL CHALLENGE AND OTHER STATE FEDERAL CLAIMS SHOULD BE HEARD BY THE FEDERAL COURT.

ARGUMENT

I.

DEAKINS V. MONAGHAN

The Fifth Circuit in Ballard V. Wilson, 856 F.2d 1568, 1571 (CA5 1988) reversed its prior holdings, saying:

> "Just last term in Deakins V. Monaghan, the Supreme Court held that even when Younger abstention is required, a federal district Court has no discretion to dismiss cognizable claims for monetary relief which cannot be redressed in a pending state proceeding."

This Court in Potomac Electric Power Co. V. Curran, (CA4) granted Certiorari, 484 U.S. 1022 (1988), vacated the judgment and remanded the case "for further consideration in the light of Deakins V. Monaghan."

The decision of this 8th Circuit in this case now fails to follow Deakins. Prior to Deakins, the Eighth Circuit was one of the circuits which had stayed the damage claim, instead of dismissing it. See: McCurry V. Allen, 606 F.2d 795,799(CCA 8,1979).And, the damages claim for constitutional violation in obtaining the ex parte Order for Temporary Injunction, stated in this federal case, cannot be redressed in that pending state court action:

Grove V. Bush, 86 Ia.94, 53NW88 (1892); Jewell Tea Co. V. Steward, 142 Ia. 353; 120 NW962 (1909).

II

MODE OF EXPEDITING LITIGATION

Here Petitioner Williams properly used the question Certification procedure to shortcut the lengthy State Appeal process. (App.pp.31-39)

She attached the Iowa Supreme Court proceedings to her MOTION TO RECONSIDER filed with the 8th Circuit. (App.p.26-p.39). Without comment, the 8th Circuit denied the Motion before the state court had answered.(App.p.6)

This Court has long approved the use of this method to short-cut federal litigation even at the United States Supreme Court level. Dresner V. City of Tallahassee, 375 U.S. 136 (1963) Aldrich V. Aldrich, 375 U.S. 75 (1963).

In Herb V. Pitcairn, 324 U.S. 117 (1944) this Court continued the case to receive the certifying answer from the state of Illinois

State Supreme Court, to be able to render its decision after receiving the answer. See Herb V. Pitcairn, 325 U.S. 77 (1945).

Iowa permits "a party to the cause" to invoke this method. (684A.2 and 684.8) and Chapter 684A, Iowa Code, is attached hereto as an exhibit. (App. P 44-45)

This method can be utilized at any stage of the proceeding. On the Motion for Rehearing when questions certified, as here, were urged, the United States Court of Appeals for the 5th Circuit, reopened the case it had earlier dismissed for the purpose of receiving certified questions to the Florida Supreme Court. Green V. American Tobacco Co., 304F.2d 70,71,86 (1962).

The 8th Circuit, in this instant case should have also retained jurisdiction to receive the answers from the Iowa Supreme Court to the Certified questions.

According to West, Uniform Laws, Vol. 12 besides Iowa, District of Columbia and Puerto Rico, twenty-eight other states have adopted

this Uniform Certification of Questions of Law Act, since its approval in 1967 by the National Conference on Uniform State Laws and the American Bar Association.[1] (App.p.43)

Iowa has been one of the states to early use this alternative to lengthy state appeals to determine state law. In Linn County Vs.City of Hiawatha, 311NW2d97,100(Ia)(1981) the U.S. District court of Iowa Northern District certified questions to the Iowa Supreme Court. That case, involved the Iowa law on "free use of real estate clearly not prohibited by city Ordinance." (See Questions Certified App. p.37 -39)

1. In Clay V. Sun Ins. Off., 363 U.S.207, 212 (1960) said: "The Florida Legislature with rare foresight, has dealt with the problem of authoritatively determining unresolved state law involved in federal litigation by a statute which permits a federal court to certify such doubtful questions of state law to the Supreme Court of Florida for its decision... where a federal constitutional question might be mooted thereby... citing Allegheny Co. V. Mashuda Co.,360 U.S. 185, 189 "and cases cited"; See also Meredith V. Winter Haven, 320 U.S. 228, 236.

In England V. Louisiana State Board of Medical Examiners, 375 U.S. 411, 415 (1964) said:

Another alternative is for the District Court to follow the certificate route, when one is available. The Florida Supreme Court is authorized to provide by Rule for answering certificates concerning state law questions tendered by the federal courts. We use that procedure on Florida state law perplexities (Dresner V. Tallahassee, 375 U.S. 136; Aldrich V. Aldrich, 375 U.S. 75, 249).

We cannot require the States to provide such a procedure; but by asserting the independence of the federal courts and insisting on prompt adjudications we will encourage its use.

III.

BAD FAITH AND HARASSMENT EXCEPTIONS TO YOUNGER ABSTENTION

Five days before filing the Petition to enforce this amendment which had never been legally enacted by the City, the Respondents knew it was void. (Affidavit of Attorney Earl Maahs Spirit Lake, Iowa re: telephone conference with City Attorney, Respondent Michael Chozen, App. p.40-41). Younger exceptions include such bad faith and harassment.. B&H Inv. Inc.V. City of Coralville, 209NW2d 115, 117 (Ia. 1973).

IV

UNCONSTITUTIONAL (EX PARTE
(LIS PENDENS LIEN

The continuing (over 3 years) ex parte lis pendens lien on Petitioner's real estate causes her continuing great and immediate irreparable injury. Dismissing Petitioner's federal case, in which she seeks to have the lien released as wrongful violation of her constitutional rights, conflicts with the recent holding of this Court in Connecticut V. Doehr ___ U.S. ___, 111 S.C.2105(June,1991).

THE CITY ORDINANCE FACIAL AND "AS APPLIED" CHALLENGE

A. As applied:

In her Complaint, as amended, Petitioner alleged this ordinance, which "shows on its face a "durational residency" and "occupant" restriction, as the basis for Respondent's taking away her rental-property right which had rightfully been grantedher by the City.

Here, as in Dunn V. Blumstein, 405 U.S. 330, 324, 338 (1972) First Amendment rights and Fourteen Amendment rights were impinged upon. At length therein, this Court reviews its prior holdings on "durational residency" cases.

Involving a City Ordinace, as is here involved, the majority of this Court, in Houston V. Hill, 482 U.S. 452, 468 (1987) said:

> "Even if this case did not involve a facial challenge under the First Amendment, we would find abstention in appropriate ...."

citing cases, including the land use case Hawaii Housing Authority V. Midkiff, 467 U.S. 229, 236 (1984) and other decisions of this Court.

B. Facial Challenge:

This ordinance containing a durational residency requirement to travel to the City of Okoboji, conflicts with the fundamental rights of tenants, entwined with rights of Petitioner Williams, Shapiro V. Thompson 394 U.S. 618, 629-631, 634 (1969). Other cases of this Court are also implicated, such as:

Nectrow V. Cambridge, 277 U.S.183,188 (1928) (Ordinances are subject to constitutional rights); Lynch V. Household, 405 U.S. 538,544 citing Shelley V. Kraemer, 334 U.S. 1, 10 (1948) (rights of U.S. Citizens to hold, buy, sell and enjoy their real estate) Myers V. Nebraska, 262 U.S. 399-401 (1923) (right to freely contract and right to establish a home); Moore V. City of E.Cleveland 431 U.S. 494 (1977) (owners right to designate persons to occupy owner's property)

It seems under the decisions of this Court that the Respondent city cannot require by ordinance, that only permanent or semi-permanent residents (defined as persons staying one month or more if they are the same person or same group of persons) can reside in Okoboji, Iowa. Under the wording of the Ordinance, others are excluded.

And, until the injunction action in State Court, they had not been excluding persons unable to reside in Okoboji, Iowa for one month or more.

Since April 1980, under the permit from the Respondent City and without objection, Petitioner had been renting the second dwelling unit in her two-family home to families traveling to reside therein while enjoying Lake Okoboji during their one-or-two-week vacation time.

As applied, under the ordinance, the Respondent City and Respondent officials with knowledge, violated Petitioner's liberty and property rights under the First and Fourteenth Amendments.

Facially, the "durational residency" and "occupant" violations in the text of the offending ordinance, are obvious.

[The amendment Ordinance 99 is still on books;and Respondents claim it was re-enacted, but some weeks after they had obtained the ex parte ORDER for and issuance of temporary injunction and placement of ex parte lis pendens lien].

VI

THE PENDING STATE APPEAL SHOULD BE STAYED

This 42 U.S.C. 1983 case falls within the exceptions to Sec. 28 U.S.C.2283 Mitchum V. Foster, 407 U.S.225, 242(1972).

Of the multiple federal claims stated in the Complaint, as amended[2], only a narrow issue is common to both the state and federal courts:

> Is the City Ordinance re-defining "Residential purposes" constitutional, facially or as applied?

In New Orleans Pub. Sev. Inc., V. New Orleans, 491 U.S. 350, 372 (1989), this court remarked:

"It is, insofar as our policies of federal comity are concerned, no different in substance from a facially challenge to an allegedly unconstitutional statute or zoning ordinance--which we would assuredly not rquire to be brought in state courts. See Wooley V. Maynard, 430 U.S.705, 711(1977)

The appeal pending in the State Supreme Court under Sec. 28 U.S.C.2283 should be stayed until the federal court has determined the constitutional issue.[3]

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2 In this federal case multiple federal claims were stated: 1) monetary damages for due process violation in obtaining the temporary injunction; 2) violation of

VII

ALTERNATIVE PROCEDURE TO STATE APPEAL COMPLETED

The Iowa Supreme Court had questions certifying state law properly before it. (App. p. 31-39: Iowa law App.p.43-45).

It declined to dispose of the case on non-constitutional grounds--state law. It declined to reverse the decision of the State district court which held the durational residential restriction was constitutional (without discussing "right to travel" and other factors in the various holdings of this court.)

Without comment, the Iowa Supreme Court denied the Motion to Certify questions. (App. p 42).

The Notice of appeal contained the required reservation under England V. Louisiana

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ex parte lis pendens 3) relief from future constitutional violations, pattern of past constitutional infractions having been alleged 4) declaratory judgment that ordinance is unconstitutional and 5) Stay of state case.

3 The District Court in the state proceedings did not reach "same person" or "same group of persons" restriction.

State Board, supra, "to return to the Federal Courts for a determination of her stated federal claims, including declaratory judgment of the ordinance involved in this matter." (NOTICE OF APPEAL, App.31-32)

This court in the footnote at p.411 of the England case, 375 U.S. said:

> And if the state court has declined to decide the state question because of the litigant's refusal to submit without reservation the federal question as well, the District Court will have no alternative but to vacate its order of abstention.

VIII

THE EIGHTH CIRCUIT ORDER CONFLICTS WITH ENGLAND V. LOUISIANA STATE BD. OF MEDICAL EXAMINERS

The ORDER of the Eighth Circuit prematurely denied Petitioner's Motion to Reconsider. To that Motion were attached all the pending proceedings in the Iowa Supreme Court on certified questions. (App. p. 6 Motion & Exh.26-39)

At page 128, Herb V. Pitcairn, 324 U.S., supra, this court in like circumstances said:

> These causes are continued for such period as will enable counsel for petitioners with all convenient speed to apply to the Supreme Court of Illinois

> for amendment or certificate, which will show whether ... or whether decision of the federal question was necessary to the judgment rendered.

In England V. Medical Examiners, (England V. Louisiana State Board of Medical Examiners,) supra, this court permitted those litigants to return to the federal court for determination of their federal constitutional claim, following an adverse decision in the state courts.

The Eighth Circuit should have continued the appeal pending an order from the Iowa Supreme Court, as in Pitcairns.

Following receipt of the Order denying certified questions to the Iowa Supreme Court, which, like in England, was adverse to Petitioner, the Eighth Circuit should have remanded the case to the federal district court for reinstatement.

CONCLUSION

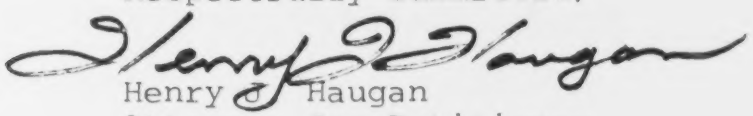
This Court never intended Younger abstention doctrine, by "the notion of the comity" as here applied, to deny a United States citizen complete access to the federal court for a hearing on stated cognizable federal claims. Deakins V. Monaghan, supra. Middlesex County Ethics Comm., supra, was misapplied.

Petitioner, here, has complied with the demands of both Federal and State Courts. The alternative to the appeal, questions certified to Iowa's highest Court, has been completed.

WHEREFORE, Petitioner requests this Court to grant certiorari, vacate the ORDER of the Federal District Court which dismissed the federal case and denied the stay of the state case, dated April 9, 1991, and remand this case for further proceedings in the light of Deakins V. Monaghan, supra, Connecticut V. Doehr, supra, and England V. State Board of Medical Examiners, supra, and hasten a

hearing on the merits. Petitioner also requests such other or alternative equitable relief as to the Court seems just.

Respectfully submitted,



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Attorney for Petitioner

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MOTION FOR AMENDMENT OF FINDINGS AND
ORDER AND JUDGMENT FILED APRIL 9,1991
(Dist.Ct.N.D.Ia.) Pp.23-25
(IN PETITION Pp (Re: Order,p.2,)

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TO RECONSIDER DENIAL OF PETITION
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42 U.S.C. 1985 (c) p. 48
42 U.S.C. 1986 p.49
42 U.S.C. 1988

28 U.S.C.1342 p.50
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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 91-2396

Lorna L. Williams, Appellant V. The Incorporated City Of Okoboji, Iowa; Ben D. Saunders, City Administrator; Leo Parks, Mayor; Hal Reed, Council Member; Chris Bjorstad, Council Member; Kirk Stauss, Council Member; Charlene Houge, Council Member; Michael Chozen, Council Member; J.L. Baughman; James Golden, Appellees.	)	Appeal from the United States District Court for the Northern District of Iowa. (UNPUBLISHED)

Submitted: March 9, 1992
Filed: March 19, 1992

Before FAGG and BEAM, Circuit Judges, and GAITAN, *District Judge.

*The HONORABLE FERNANDO J. GAITAN, JR., United States District Judge for the Western District of Missouri, sitting by designation.

PER CURIAM.

This action involves a dispute over a zoning ordinance. The City of Okoboji, Iowa, sought to enforce a zoning ordinance against Williams. The ordinance prevents rental of property for periods of less than one month. The City sought and obtained a temporary injunction against Williams in Iowa District Court for Dickinson County, Iowa. While the City's action for a permanent injunction was pending, Williams filed this civil rights action[1] seeking a declaration that the ordinance at issue was unconstitutional and further seeking an immediate order staying the state court proceedings. The district court granted the City's motion for summary judgment and dismissed the action on Younger abstention grounds. We affirm.

The Younger abstention doctrine requires that, except in extraordinary circumstances, federal courts should not enjoin pending state prosecutions. Younger V. Harris, 401

U.S. 37, 54(1971); see also Middlesex County Ethics Comm. V. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982) (extending the Younger doctrine to noncriminal judicial proceedings). On careful review of the record, we agree with the decision of the district court and affirm on the basis of its well-reasoned opinion. See 8th Cir. R. 47B. Any further discussion would lack precedential value.

We note also that the Dickinson County Court has now ruled that the ordinance at issue is constitutional, which renders the request for a stay moot. Incorporated City of Okoboji V. Williams, No. 18193, Judgment and Decree (Iowa Dist. Ct., Sept. 30, 1991). We take judicial notice of that order. Accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. Court of Appeals, Eighth Circuit.

[1]In her pro se complaint under 42 U.S.C. 1983, Williams alleged that the ordinance interfered with her property interests, her right to equal protection, and constituted a taking without due process. She further alleged that the City's enforcement of the ordinance was arbitrary and capricious and caused her severe mental distress. The complaint was later amended to add allegations that the ordinance interfered with her rights to privacy, travel and freedom of association.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE E GHTH CIRCUIT

No. 91-2396NISC

Lorna L. Williams,	)	
	)	Order Denying
Appellant	)	Petition for
	)	Rehearing and
V.	)	Suggestion for
	)	Rehearing En Banc
The Incorporated City of Okoboji, etc., et al,	)	
	)	
Appellees	)	

The suggestion for rehearing en banc is denied. The petition for rehearing is also denied.

May 14, 1992

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 91-2396NISC

Lorna L. Williams, Appellant V. The Incorporated City of Okoboji, etc., et al, Appellees	Appeal from the United States District Court for the Northern District of Iowa

Appellant's motion for reconsideration of the court's order of May 14, 1992 has been considered by the court and is hereby denied.

June 5, 1992

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA (Filed
WESTERN DIVISION April 9, 1991)

LORNA L. WILLIAMS, Plaintiff	Civil No.89-4058
THE INCORPORATED CITY OF OKOBOJI, IOWA, et al, Defendants	ORDER

The defendants have filed a motion for summary judgment which Plaintiff Williams has resisted. Ms. Williams has in turn filed an amended motion for stay of state court proceedings. The defendants have resisted that motion. The court held a hearing on the motions and, after considering the written and oral arguments as well as supplemental correspondence from the parties, grants the defendants' motion for summary judgment on abstention grounds. Ms. Williams' motion for stay is denied.

Background

Ms. Williams owns a duplex on Lake Okoboji and rents out half of it for short periods of time. She challenges a City of

Okoboji ordinance which forbids persons who live on the lake from renting their property in residential areas for periods of less than 30 days. She claims the ordinance was unconstitutionally enacted and is unconstitutional as applied to her. She has filed this action under Sec.42USC 1983against the city, the city administrator, the mayor, all the city council members, and the city attorney.

Before Ms. Williams initiated this suit, the City of Okoboji filed suit against her in Dickinson County Court for her alleged violation of the ordinance. The Dickinson County action is still pending. The defendants now move for summary judgment arguing, among other things, that this court should abstain from hearing this case. Ms. Williams asks this court to enjoin further action in the state court proceedings.

Discussion

Principles of equity, comity, and federalism limit this court's jurisdiction.

Younger V. Harris, 401 US 37, 44 (1971). In Allegheny Corp. V. McCartney, 896 F2d 1138, 1142 (8th Cir. 1990), the court of appeals discussed Younger and its underlying principles:

> Younger abstention promotes the interests of both state and federal governments. As the Court announced in Younger, '(T)he National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.' Id. Younger abstention is also founded, in part, on the principle that'the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.' Id. In response tothese concerns the Younger Court held that, except in extraordinary circumstances, federal courts should not enjoin pending state criminal prosecutions. Id. at 54, 91 S. Ct. at 755.
>
> Following Younger V. Harris,the Supreme Court extended the Younger doctrine to noncriminal state court proceedings, including administrative proceedings, if: (1) there is an ongoing state judicial proceeding; (2) important state interests are implicated; and (3) there is an adequate opportunity to raise constitutional challenges in the state proceedings. Middlesex County Ethics Com. V. Garden State Bar Ass'n, 457 U.S. 423, 432 . . . (1982).

Applying the three factors set out in the Middlesex County Ethics Committee case, this court deems Younger abstention appropriate here. First, needless to say, the pending action in Dickinson County Court qualifies as an ongoing state judicial proceeding. Second, land use disputes implicate important local and state interests. See, for example, Hill V. City of El Paso, Texas, 437 F2d 352, 357 (5th Cir.1971) And third, Ms. Williams will have adequate opportunity to raise her constitutional challenges in the state proceedings. The Dickinson County Court's decision on the City of Okoboji's motion for summary judgement makes clear Ms. Williams' impending opportunity to address the ordinance's constitutionality: "The question of constitutionality of the ordinance remains. Plaintiff's motion for summary judgment must fail and this case should proceed to trial for such determination." The Incorporated City of Okoboji, Iowa V. Lorna

Williams, Equity No. 18193, slip op at p.5 (Dickinson County, Iowa District Court, December 22, 1989).

Ms. Williams cites Hawaii Housing Authority V. Midkiff, 467 US 229 (1984) to support her argument that this court need not abstain. In Midkiff, the Supreme Court held that the federal district court need not have abstained from exercising its jurisdiction to decide the constitutionality of a land condemnation scheme. The court said:

> Under Younger abstention doctrine, interests of comity and federalism counsel federal courts to abstain from jurisdiction whenever federal claims have been or could be presented in ongoing state judicial proceedings that concern important state interests. See Middlesex Ethics Committee V. Garden State Bar Assn., 457 US, 423,432-437 (1982). Younger abstention is required, however, only when state court proceedings are initiated 'before any proceedings of substance on the merits have taken place in the federal court.' Hicks V. Miranda, 422 U.S. 332, 349 (1975).

Midkiff, 467 US at 237-38. Because state judicial proceedings had not been initiated at the time Midkiff filed suit in federal court, Younger abstention was not required.

Id. at 239. The Midkiff case is distinguishable from this case: the City of Okoboji initiated its state court injunctive action before Ms. Williams filed this suit. Under the circumstances here, Younger abstention is required.[1] Midkiff 467 US at 238.

Accordingly, IT IS ORDERED:

1. The defendants' motion for summary judgment is granted on Younger abstention grounds. This case is dismissed without prejudice.

2. In light of the court's decision to abstain, Ms. Williams' amended motion to stay the state court proceedings is denied.

April 9, 1991

s/
Donald E. O'Brien, Chief Judge
U.S. District Court

[1]Ms. Williams also cites Kennedy V. LeFebvre, 847 F2d 482 (8th Cir. 1988), and Runge V. Dove, 857 F2d 469 (8th Cir. 1988) in support of her resistance to the defendants' motion for summary judgment. Both cases address the availability of qualified immunity for government officials. But because this court has determined that abstention is required, it cannot reach the qualified immunity issue. Similarly, the court need not reach the remainder of the defendants' arguments for summary judgment.

Filed May 21,1991

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

LORNA L. WILLIAMS, Plaintiff	)	CIVIL NO.89-4058
V.	)	ORDER
THE INCORPORATED CITY OF OKOBOJI, IOWA, et al, Defendants	)	

Plaintiff Williams has filed a motion asking this court to amend its order of April 9, 1991, which granted the defendants' motion for summary judgment on Younger abstention grounds. The defendants resist the motion; Ms. Williams has replied to the resistance. After considering all the arguments, the court is persuaded that, for the reasons stated in the defendants' resistance, Ms. Williams' motion for amendment should be denied.

IT IS SO ORDERED.

May 21, 1991

/s/
Donald E. O'Brien, Chief
Judge, U.S. District Court

Copies of Order
mailed regular on May 21, 1991 to:
Lorna Williams, 529-46th St., Des Moines,Ia.
Henry Haugan, 509 Fifth St.,, W.D.M.,Ia.
James Clarity, P. O. Box E, Spirit Lake, IA.

(Page 9 - Plaintiff's Pro se Complaint filed June 16, 1989, No. C-89-4058 Joint Appendix U.S. Court of Appeals (CA 8), No. 91-2396, p. 74)

RELIEF SOUGHT

WHEREFORE, PLAINTIFF PRAYS:

1. Plaintiff seeks an immediate ORDER staying the proceedings captioned THE INCORPORATED CITY OF OKOBOJI, IOWA Plaintiff Vs. LORNA L. WILLIAMS, Defendant, pending in the Iowa District Court for Dickinson County, Iowa, Equity No. 18,193, Lis Pendens No. ___, until this action can be heard and determination made by this Federal Court;

2. That an affidavit is filed in support of said Application for Stay Order: (That if such Stay is ordered, Plaintiff will be able to attempt to mitigate damages).

3. Money damages for the wrongful taking of Plaintiff's property under the Temporary Injunction Order and the threat of and filing of the Petition for Injunction.

4. Money damages for legal and other expenses occasioned by the threat to file and filing the Petition for Injunction and Lis Pendens, and obtaining the ex parte ORDER FOR TEMPORARY INJUNCTION;

5. Money damages for mental anguish, emotional distress and physical pain and the expenses and medical treatment costs incurred;

6. Declaratory judgment that the ORDINANCE 99 be declared unconstitutional and the Defendants enjoined from seeking to enforce the same;

7. Declaratory judgment that ORDINANCE 106 pertaining to dock privileges be declared unconstitutional so far as it pertains to or affects Plaintiff's property and the Defendant enjoined from seeking to enforce the same in this regard;

8. Declaratory judgment that the injunction proceedings in the State Court were not justified and the Defendants ordered to dismiss the same and release the Lis Pendens all at their costs;

9. Punitive damages against all Defendants, jointly and severally in the sum of One Hundred Fifty Thousand ($150,000) Dollars.

10. That such further or alternative equitable relief as to the Court seems just and equitable.

Plaintiff further prays that Judgment for compensatory damages, the costs of this action and punitive damages be entered against the Defendants jointly and severally.

/s/

Lorna L. Williams, Plaintiff
529 46th Street
Des Moines, IA. 50312

(Page 10-Plaintiff's Amendment to Complaint filed Sept. , 1989, C89-4058, Joint Appendix U.S. Ct. Appeal Case No. 91-2396, (CA8)p.90

11. That Defendants be restrained and enjoined from in the future interfering with Plaintiff's personal and property rights under the Federal Constitution.

AMENDMENT TO RELIEF SOUGHT

WHEREFORE, Plaintiff repreats and incorporates herein paragraphs 1 through 9 in the Division "Relief Sought" in her Complaint:

1. Plaintiff further prays that she be awarded compensatory damages under DIVISION V for her financial loss, expenses in connection with actions in both the State Court and in this court, including reasonable attorney fees for her attorney;

2. Plaintiff further prays for money damages for her past, present and future physical pain and suffering, past, present and future mental anguish and emotional distress under DIVISION V of her Amendment to the Complaint;

3. Plaintiff prays for punitive damages

to be assessed against Defendants individually and in their official capacities for the many egregious and aggravated circumstances in connection with deprivations of the constitutional rights of this Plaintiff as alleged in Division V of the Amendment to Complaint;

4. Plaintiff further prays for a declaratory judgment that the definitions of "Residential Purposes" in both Ordinance 63 (1972) and Ordinance 99 (August 1988) be declared unconstitutional, null and void and that the Defendants be stayed from the continuation of the injunction proceedings in State Court styled as The Incorporated City of Okoboji, Iowa Vs. Lorna L. Williams, No. 18-193, Iowa District Court for Dickinson County and order the same dismissed at the City of Okoboji costs.

5. That Defendants be restrained and enjoined from interfering with Plaintiff's constitutional rights, both personal and property rights in the future.

PRAYER FOR JUDGMENT

Plaintiff prays for Judgment against the Defendants, individually and in their official capacities, jointly and severally in the sum of One Hundred Fifty Thousand Dollars for compensatory and punitive damages and for the costs of this action including attorney fees for her attorneys.

Plaintiff further prays for such alternative, further or other relief as to the Court seems just in the premises.

/s/

Henry J. Haugan
402 Maple Street
West Des Moines, IA.5026[illegible]
ATTORNEY FOR PLAINTIFF

ORIGINAL FILED IN DUPLICATE
Copy Mailed Sept.__, 1989
to: James A. Clarity, Attorney
for Defendants
Earl H. Maahs, Attorney for
Defendant in State Court (Williams)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

LORNA L. WILLIAMS, Plaintiff V. THE INCORPORATED CITY OF OKOBOJI, IOWA, et al, Defendants	CIVIL NO.89-4058 MOTION FOR AMENDMENT OF FINDINGS AND ORDER FILED April 9, 1991

COMES NOW the Plaintiff, pursuant to FRCP 52(b) and states to the Court:

1. That the dismissal procedure of the 5th Circuit shown in the cited Hill V. City of El Paso, Texas, followed by this Court, was changed in Ballard V. Wilson, 856 Fed. 2d1568, 1571 (1988), the 5th Circuit saying of Deakins V. Monaghan, 484 U.S. 193(1988):

> "Just last term in Deakins V. Monaghan, the Supreme Court held that even when Younger abstention is required, a federal court has no discretion to dismiss cognizable claims for monetary relief which cannot be redressed in a pending state proceeding."

2. The United States Supreme Court in Potomac Electric Power Co. V. Curran, (C.A.

4th Cir.) granted certiorari, 484 U.S.1022 (1988), vacated the judgment and remanded the case "for further consideration in the light of Deakins V. Monaghan.

Thus, the Supreme Court has said in Deakins that Lorna Williams' claims in the within cause, other than the state injunction action, must be retained by this Court even in light of this Court's abstention, and that this Court has no discretion to dismiss all of Lorna Williams' remaining federal claims. See also England V. Louisiana State Board of Medical Examiners (1964), 375 U.S. 411, 415.

WHEREFORE, Plaintiff moves the Court to reconsider its Order of April 9, 1991, and after reconsideration to retain jurisdiction of the federal claims stated in Plaintiff's Complaint as amended, pending the outcome of the equity quasi-criminal injunction in State Court, and amend the order and judgement acccordingly.

Respectfully submitted,

LORNA L. WILLIAMS

By /s/

Henry J. Haugan
402 Maple Street
West Des Moines, IA.50265
(515-277-4700)
Attorney for Plaintiff

COPY TO:

James A. Clarity
832 Lake Street
P. O. Box E
Spirit Lake, IA. 51360-0605

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

LORNA L. WILLIAMS,	)	CIVIL NO. 89-4058
Plaintiff	)	REPLY TO RESISTANCE TO PLAINTIFF'S MOTION FOR AMENDMENT OF FINDINGS, ORDER AND JUDGMENT FILED April 9,1991
V.	)	
THE INCORPORATED CITY OF OKOBOJI, IOWA, et al,	)	
Defendants	)	

COMES NOW Plaintiff and for REPLY to Defendants' RESISTANCE STATED ABOVE, states:

1. It is not true that the State Court in the pending equity injunction suit has jurisdiction to assess and award damages to Mrs. Williams for the wrongful injunction; no counterclaim can be filed in state court because there is no "final judgment"; and only after a "final judgment" can an independent new action be brought in the Iowa State Court. 42A C.J.S. Injunctions Sec.320(a); 29 I.R.C.P.; Grove V. Bush (1892) 86 Ia. 94, 53 N.W. 88; Jewell Tea Co. V. Stewart (1909) 142 Ia. 353; 120 N.W. 962.

2. That in conjunction with other stated Federal Claims for relief (Complaint and Amendments), Mrs. Williams seeks redress for Constitutional violations for a Temporary Injunction obtained by Defendants without notice and hearing on an Ordinance they knew was void, in keeping with their pattern of wrongful interference with Mrs. Williams' Federal Constitutional rights, which wrongful conduct commenced in the year 1976. Williams V. Town of Okoboji, Ben Saunders, City Clerk, Leo Parks, Mayor, 606 F.2d 812 (1979).

3. That in addition to the Federal claim for monetary award, Mrs. Williams seeks to have Defendants "restrained and enjoined in the future from interfering with Plaintiff's personal and property rights under the Federal Constitution." (Complaint and paragraph II, September Amendment.)

4. That Mrs. Williams selected this Federal forum for redress of her stated

Federal claims in June, 1989, as permitted under 42 U.S.C. Sec. 1983; England V. Louisiana State Board of Medical Examiners, 375 U.S. 411, 415 (1964).

5. That the Order and Judgment of April 9, 1991 should be reconsidered and this Federal case held in abeyance pending the final judgment in the State equity injunction suit. Deakins V. Monahan, 484 U.S. 193 (1988).

WHEREFORE, Plaintiff prays as in her MOTION for Amendment of Findings, Order and Judgment filed April 9, 1991 herein.

LORNA L. WILLIAMS, Plaintiff

By /s/
Henry J. Haugan
402 Maple Street
West Des Moines, Ia. 50265
Attorney for Plaintiff

COPY TO:
James A. Clarity, Esq.
832 Lake Street
Spirit Lake, Iowa 51360

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

LORNA L. WILLIAMS, Appellant V. THE INCORPORATED CITY OF OKOBOJI, IOWA, et al, Appellees	)	No. 91-2396 Motion to Reconsider Denial of Petition For Rehearing and Suggestion For Hearing En Banc

---

COMES NOW Appellant and moves the Court to reconsider its denial of Petition for Rehearing and Suggestion for En Banc Hearing and moves the Court to reinstate this Appeal and the case in the District Court, and as grounds therefore states:

1. That attached hereto as Exhibit "A" is a copy of the NOTICE OF APPEAL Appellant filed in the Iowa Supreme Court on May 13, 1992, giving Notice of the federal litigation and thus preserving her right to return to the federal court for determination of her federal claims. England V. Louisiana Board of Medical Examiners, 375 U.S.411 (1964);

2. That attached hereto, as Exhibits "B" and "C", respectively, are Appellant's MOTION in the Iowa Supreme Court for Certification of Iowa law to Federal Courts and copy of QUESTIONS CERTIFIED;

3. That attached hereto as Exhibit "D" is a copy of Appellant's APPLICATION FOR STAY OF APPEAL pending determination of the Declaratory Judgment Action claim stated in Appellant's COMPLAINT filed June 16, 1989 in the Federal District Court;

4. That the Iowa District Court has had "reasonable opportunity", spanning over two years since the filing of its Petition on May 24, 1989 and obtaining an ex parte injunction, to determine the Iowa law to see if the federal constitutional question can be avoided, (being the purpose of abstention);

5. That under the procedure in Chapter 684A, Iowa Code, the Iowa Supreme Court can construe a municipal ordinance in accordance with the Iowa law to see if the

constitutional question can be avoided. Linn County V. City of Hiawatha, 311 N.W.2d 100, (1981);

6. That in view of these new State procedural developments, based upon the following case support, this court should reinstate the case in the Federal Court and order it held in abeyance pending the outcome of the new State procedural developments.

Deakins V. Monaghan, 484 U.S.193(1988)

England V. Louisiana St.Med.Bd.,375 U.S. 411, 416, 421-22 & Footnotes 12-13 P.421, 422; N.12 p.422 (1964)

American Trial Lawyers V. N.J.Supreme Court, 409 U.S. 467, 469 (1973)

Lake Carriers' Assn. V.MacMullan, 406 U.S. 498, 512-513 (1972)

Zwickler V. Koota, 398 U.S. 241, 245-245 n.4 (1967)

Harrison V. N.A.A.C.P., 360 U.S. 167,179 (1959)

Spector Motor Ser. M. McLaughlin, 323 U.S. 101, 106
(The Supreme Court in note 12 p.421, England, cites State case, Spector Motor Service V. McLaughlin.

In the appeal in Spector Motor Service, supra, at p.91, the State Court quoted the United States Supreme Court 1945 decision:

"We therefore vacate the judgment of the Circuit Court of Appeals and remand the cause to the District Court with

> directions to retain the bill pending the determination of proceedings to be brought with reasonable promptitude in the state court in conformity with this opinion"

Holding the same in Deakins, supra, some forty-three years later and in Lake Carriers supra, the United States Supreme Court said:

> "We do, however, vacate the judgment below and remand the case to the District Court with direction to retain jurisdiction pending institution by appellants of appropriate proceedings in Michigan courts. See Zwickler V. Koota, 289 U.S. at 244 n.4."

WHEREFORE, Appellant respectfully moves the Court to reconsider its ORDER denying a Rehearing, and upon such reconsideration, supplement the Decision of the three-judge panel filed on March 19, 1992 by reinstating this appeal and reinstating the case No. 89-4058 in the United States District Court, Northern Division pending the outcome of the decision of the Iowa Supreme Court on said MOTION and APPLICATION which are set for hearing on May 27, 1992.

s/

Henry J. Haugan
509 Fifth Street
West Des Moines, IA. 50265

Original mailed 5/19/92 to
Clerk of the United States Court
of Appeals for the Eighth Circuit

Copies delivered to the Iowa
Supreme Court on 5/19/92

Copies mailed to:
James A. Clarity
P. O. Box E
Spirit Lake, IA. 51360
Attorney for Appellees
5/19/92

(Exhibit A -Attached)

IN THE DISTRICT COURT FOR DICKINSON COUNTY

THE INCORPORATED CITY OF OKOBOJI, IOWA,	)	No. 18, 193
Plaintiff	)	NOTICE OF APPEAL
V.	)	
LORNA L. WILLIAMS,	)	
Defendant	)	

TO: THE INCORPORATED CITY OF OKOBOJI, IOWA, Plaintiff, MICHAEL J. CHOZEN, 832 Lake Street, P. O. Box E, Spirit Lake, IA. 51360
CLERK OF THE ABOVE CAPTIONED DISTRICT COURT, Spirit Lake, IA. 51360

NOTICE IS HEREBY GIVEN to each of the above that Defendant Lorna L. Williams appeals hereby to the Supreme Court of Iowa from the final Judgment and Decree entered against her in said cause on September 30, 1991, and the ORDER Overruling and denying Defendant's MOTION FOR ENLARGED OR AMENDED FINDINGS, UNDER I.R.C.P. 179(b) on April 23, 1991 and ORDERS on Amendments entered on April 23, 1992 and April 30, 1992, and appeals from all other interlocutory rulings and orders inhering in the final judgment.

NOTICE is also given that Defendant in complying with the Iowa Statutes and

Appellate Rules of Civil Procedure to protect her interests under Iowa law, she reserves the right to return to the Federal Courts for a determination of her stated federal claims, including declaratory judgment of the Ordinance involved in this matter in the pending causes in the United States District Court for Iowa, Western District, Western Division and U.S. Court of Appeals for the Eighth Circuit in cause No. 91-2396 in the event of an adverse decision in this appeal, which NOTICE is given to protect her Federal constitutional rights pursuant to England V. Louisiana State Bd. of Medical Examiners, 375 U.S. 411, (1964).

s/ Lorna L. Williams
Defendant

Original filed 5/11/92 Office of Clerk
Copy delivered 5/11/92 to
Michael J. Chozen, Attorney for Plaintiff
832 Lake Street, P. O. Box E
Spirit Lake, IA. 51360

EXHIBIT A -

(Exhibit B- Attached)

IN THE IOWA SUPREME COURT

THE INCORPORATED CITY OF OKOBOJI, IOWA,	Appeal No.92-752
Appellee	MOTION FOR CERTIFICATION OF IOWA LAW TO THE FEDERAL COURTS
V.	
LORNA L. WILLIAMS,	
Appellant	

COMES NOW Lorna L. Williams, Appellant, pursuant to Chapter 684A, 1991 Code of Iowa and in keeping with the procedure followed by this Court in Linn County V. City of Hiawatha, 311 N.W.2d 95, 100 (1981) states:

1. That there are pending in the Federal Courts the following cases, to wit:

Lorna L. Williams V. The Incorporated City of Okoboji, Iowa, et al,

In the United States Court of Appeals for the Eighth Circuit, No. 91-2396.

2. Lorna L. Williams V. The Incorporated City of Okoboji, Iowa, et al,

In the United States District Court Northern District of Iowa, Western Division, Case No. 89-4058 (on appeal to the Eighth Circuit, Case No. 91-2396)

3. Lorna L. Williams V. The Incorporated City of Okoboji, Iowa, et al.

(Exhibit B-Attached)

In the United States District Court, Northern District of Iowa, Western Division, Case No. 91-4091 (Declaratory Judgment in context of owner occupancy)

2. That the attempted amendatory Ordinance No. 99 by the Appellee City, copy attached hereto, is involved in all three of the above captioned cases.

3. That in Linn County V. City of Hiawatha, 311 N.W.2d 95, 100 (1981) this Iowa Supreme Court certified to the Federal Court the Iowa law on strict construction of city ordinances in favor of property owners, and the application of this rule by this Court or the federal courts would dispose of this appeal and Appellant is requesting Chapter 684A Iowa Statute procedure be utilized here; See also Jersild V. Sarcone, 149 NW2d 179,185 (1967); Livingston V. Davis, 50 N.W. 2d 592,596 (Ia.1951) Johnson V. Bd. of Adj., 239NW 2d 873, 881 (Ia.1976); Arkae Develop., Inc. V. Zoning Bd. City of Ames, 337 N.W. 2d, 884,886 (Ia. App. Ct. 1983); Helmke V. Bd. of Adj. City of Ruthvan, 418 NW 2d, 346 (Ia. 1988)

4. That there is pending in the United States District Court for the Northern District, Western Division a second PETITION in Case No. C91-4091 filed May 23, 1991 for declaratory judgment and other relief which has not as yet been set for trial but which would dispose of this State case appeal if the Appellee's ordinance is held unconstitutional. (Ex.E, cover page);

WHEREFORE, Appellant prays that this Court, as a matter of comity, judicial economy and justice hold this appeal in abeyance pending a determination by the Federal Courts in said matters pending before them, and for such alternative relief as to the Court seems just in the premises.

/s/

Lorna L. Williams, Appellant
529-46th Street, Des Moines, IA. 50312
(515) 277-0012

EXHIBIT B

VERIFICATION

STATE OF IOWA)
) ss:
POLK COUNTY)

I, Lorna L. Williams, being first duly sworn on oath state that I have read the foregoing APPLICATION FOR STAY and know the contents thereof and that the statements therein contained are true as I verily believe.

/s/
Lorna Williams

Subscribed and sworn to before me the undersigned Notary Public this 13 day of May, 1992.

Notary Public

ORIGINAL FILED 5/13/92
Copy mailed 5/13/92 to
Michael J. Chozen, Attorney
for Appellee

(Exhibit C-Attached)

IN THE IOWA SUPREME COURT

THE INCORPORATED CITY OF OKOBOJI, IOWA,	)	No. 92-752
Appellee	)	Questions of Law Certified Pursuant to Chapter 684A, Code of Iowa and Attached Motion for Certification Filed Herein 5/13/92
V.	)	
LORNA L. WILLIAMS,	)	
Appellant	)	

COMES NOW Appellant, Lorna L. Williams, pursuant to Sec. 684A.2 and 684.8, the Code, being a party to this Court action and in the actions in the Federal courts stated in the attached MOTION which is made a part hereof and states: (Exhibit A).

1. That she attaches Appellee City's 1972 Ordinance No. 63 and its attempted amendatory Ordinance No. 99 defining "Residential Purposes" which are made a part hereof; (Exhibits B & C)

2. That for consideration of the federal abstension application and for consideration of construction of said Ordinanceson Iowa law instead of reaching the Constitutional question, the following QUESTIONS are certified:

QUESTION I

Whether a legal action was commenced under

I.R.C.P. 48 on the day the Appellee City deposited a PETITION FOR INJUNCTION with the Clerk of Court when the PETITION, as grounds cites and quotes from attempted amendment Ordinance 99 which had never been enacted by the City Council with the prescribed Notice of hearing published in accordance with Sec. 414.4, the Code.

QUESTION II

Whether, under Iowa law, a legal action was commenced under I.R.C.P. 48 on the day Appellee City deposited a PETITION FOR INJUNCTION with the Clerk of Court when it did not allege as grounds the original 1972 Ordinance 63 but alleged it had been amended and quoted from the attempted amendatory Ordinance 99?

QUESTION III

Whether, under the Iowa law on "free use of property not clearly prohibited by Ordinance" can Appellant rent her dwelling for one or two weeks as her choice because these ordinances do not clearly prohibit such?

QUESTION IV

Whether, under Iowa law, Appellee City, can under said ordinances, deprive Appellant of her right to choose the persons who may reside in her private dwelling and not be limited to "the same person or same group of persons" who are there "one month or more"?

QUESTION V

Whether, under Iowa law, Appellant owner of her private dwelling can select the period of time for persons to reside in her home and not be required to have them there "one month or more"?

WHEREFORE, Appellant prays that the Court give statements of law to the questions certified above as prayed in her MOTION

herein.

/s/

Lorna L. Williams, Appellant
529 46th Street
Des Moines, IA. 50312
(515) 277-0012

ORIGINAL FILED 5/14/92
Copy mailed 5/14/92 to
Michael J. Chozen, Attorney
for Appellee
P. O. Box E, Spirit Lake, IA. 51360

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

LORNA L. WILLIAMS, Plaintiff	:	C 89-4058
v.	:	AFFIDAVIT
THE INCORPORATED CITY OF OKOBOJI, IOWA et al., Defendants	:	

STATE OF IOWA, COUNTY OF DICKINSON, SS:

I, Earl M. Maahs, being first duly sworn, do upon oath depose and state:

That on May 19, 1989, I had an office conference with Lorna Williams with regard to the City of Okoboji advising her that she was in violation of the zoning ordinance because she was renting part of her property for less than one month at a time;

That Lorna Williams provided me with the minutes of August 9, 1988, relating to the adoption of Ordinance No. 99 amending the zoning ordinance of the City of Okoboji which reflected that there was no public hearing prior to adoption;

That on May 19, 1989, I had a phone conference with Attorney Michael Chozen and advised

him that after reviewing the minutes of the City Council of August 9, 1988, and reviewing the City Code of Iowa, it was necessary to publish notice and hold a public hearing to amend the zoning ordinance and that according to the minutes, this procedure was not followed and, thus, the ordinance was invalid.

s/ Earl M. Maahs
Earl M. Maahs

Subscribed and sworn to before me this ___day of March, 1991.

s/Sally C. DeLoss
Notary public in and
for the State of Iowa
(Seal)

IN THE SUPREME COURT OF IOWA
No. 92-752
Dickinson County No. 18193

O R D E R

FILED
Jul 09 92
Clerk S.C.

INCORPORATED CITY OF OKOBOJI, IOWA,
Plaintiff-Appellee

vs.

LORNA L. WILLIAMS,
Defendant-Appellant

This matter comes before the court on the defendant's motion for certification of Iowa law and application for stay. The plaintiff has filed resistance to both requests and the defendant has filed responses to the resistances. We have considered all supporting documents.

After consideration by this Court, the Defendant's motion for certification and application for stay are hereby overruled and denied.

Dated this 9th day of June, 1992.

s/ Linda K. Neuman
Justice, Supreme Court of Iowa

Copies to:
Michael J. Chozen
832 Lake Street; P.O.Box E
Spirit Lake, Iowa 51360

Lorna L. Williams
529 46th Street
Des Moines, Iowa 50312

UNIFORM CERTIFICATION OF QUESTIONS OF LAW ACT
1967 ACT

Table of Jurisdictions Wherein Act Has Been Adopted

Alabama, Alaska, Arizona, Colorado, Connecticut, District of Columbia, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Dakota, Washington, West Virginia, Wisconsin, and Wyoming.

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CODE OF IOWA - 1991
CHAPTER 684A

QUESTIONS OF LAW IN SUPREME COURT CERTIFIED

684.1 Power to answer
684.2 Method invoking
684.3 Preparation of certification order.
684.4 Preparation of certification order.
684.5 Costs of certification.
684.6 Procedure
684.7 Opinion
684.8 Power to certify
684.9 Procedure on certifying
684.10 Construction
684.11 Title.

684A.1 Power to answer.

The Supreme Court may answer questions of law certified to it by the supreme court of the United States, a court of appeals of the United States, a United States District Court or the highest appellate court or the intermediate appellate court of another state, when requested by the certifying court, if there are involved in a proceeding before it questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the appellate courts of this state.

684A.2 Method of invoking.

This chapter may be invoked by an order of a court referred to in section 684A.1 upon the court's own motion or upon the motion of a party to the cause.

684A.8 Power to certify.

The Supreme Court of Appeals, on its own motion of the motion of a party, may order certification of questions of law to the highest court of another state* when it appears to the certifying court that there are involved in a proceeding before the court questions of law of the receiving state which may be determinative of the cause then pending in the certifying court and it appears to the certifying court that there are no controlling precedents in the decisions of the highest court or intermediate appellate courts of the receiving state.

684A.11 Title.

This chapter may be cited as the "Uniform Certification of Questions of Law Act."

*(Federal Court is included: Linn County Vs. City of Hiawatha, 311NW2d 97, 100 (Iowa, 1981))

IOWA CODE (1989 and 1991)

414.4 ZONING REGULATIONS, DISTRICT BOUNDARIES, AMENDMENTS.

The council of the city shall provide for the manner in which the regulations and restrictions and the boundaries of the district shall be determined, established, and enforced, and from time to time amended, supplemented or changed. However, the regulation, restriction, or boundary shall not become effective until after a public hearing at which parties in interest and citizens shall have an opportunity to be heard. The notice of the time and place of the hearing shall be published as provided in section 362.3 except that at least seven days notice must be given and in no case shall the public hearing be held earlier than the next regularly scheduled city council meeting following the published notice.

414.5 Changes - protest

....The provisions of section 414.4 relative to public hearings and official notice apply equally to all changes or amendments.

CODE OF IOWA (1989 and 1991)

Sec. 414.20 Actions to correct violations

In case any building is erected...or land is used in violation of this chapter or of any ordinance or other regulation made under authority conferred thereby, the council may...institute any appropriate action or proceeding to prevent ...such use..(underscoring supplied.)

U.S.CODE

42 USC, Sec. 1983 -Civil action for deprivation of Rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 USC 1985 - Conspiracy to interfere with Civil Rights

In any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or

property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act to be committed, shall be liable to the party injured or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action.

28 U.S.C. 1343. Civil rights and elective franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the juris-

diction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, includi.., the right to vote.

28 U.S.C. 2201. Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954 or a proceeding under section 505 or 1146 of title 11, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. 2202. Further relief

Further necessary or proper relief based on a declaratory judgment or decree may be

granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

28 U.S.C. 2283. Stay of State court proceedings

A COURT OF THE United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

CONSTITUTION OF THE UNITED STATES

AMENDMENT 1.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT 9.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT 14.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.